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2021/0418(CNS)**

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'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Draft Council Directive amending Directive 2008/118/EC and Directive (EU) 2020/262 (recast) as regards tax-free shops situated in the French terminal of the Channel Tunnel
- General approach

1. On 16 December 2021, the Commission submitted the abovementioned proposal to the Council. The aim of the proposal is to authorise the reopening of tax-free shops in the French terminal of the Channel Fixed Link following the United Kingdom's withdrawal from the European Union.
2. The Working Party on the United Kingdom and the Working Party on Tax Questions examined the proposal on 14 January and 11 February 2022, respectively. All of the delegations can support the text of the draft Directive as set out in the annex to this note.
3. The opinions of the Economic and Social Committee and of the European Parliament on the interinstitutional file 2021/0418(CNS) are pending.
4. In view of the above, the Permanent Representatives Committee is invited to recommend that the Council agree, as an 'A' item on the agenda of a forthcoming meeting, on a general approach on the draft Council Directive.

Draft

COUNCIL DIRECTIVE

amending Directive 2008/118/EC and Directive (EU) 2020/262 (recast) as regards tax-free shops situated in the French terminal of the Channel Tunnel

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Article 14(1) of Council Directive 2008/118/EC³ authorises Member States to exempt from payment of excise duty excise goods supplied in tax-free shops located in Union airports and ports for sale to travellers to a third territory.

¹ OJ C , , p. .

² OJ C , , p. .

³ Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ L 9, 14.1.2009, p. 12).

- (2) The Channel Fixed Link is a twin-bored tunnel rail link, under the English Channel between Folkestone (Kent, United Kingdom) and Coquelles (Pas-de-Calais, France). It has an associated service tunnel and terminal areas at either end for control of access to, and egress from, the tunnels. It has the characteristics of a maritime link with border controls at the two access terminals. Both infrastructures allow a sea crossing under the same conditions.
- (3) The terminal of the Channel Fixed Link should therefore be considered equivalent to a port within the meaning of Article 14 of Council Directive 2008/118/EC.
- (4) Due to the United Kingdom's withdrawal from the Union which led to the opening of the tax-free shops in notably the ports of Calais and Dunkirk and in the UK terminal of the Channel Fixed Link in Folkestone, it is appropriate to authorise the opening of tax-free shops in the French terminal of the Channel Fixed Link in Coquelles.
- (5) Given that passengers using the Channel Fixed Link cannot exit until they reach the destination, the risk of non-compliance with the excise duty and tax free import allowances by travellers and consequently the control burden for the customs authorities would be limited. However, to prevent any evasion, avoidance or abuse, France shall take the necessary control measures to ensure the proper application of the tax exemption in the tax-free shops of the French terminal in Coquelles.
- (6) Given that Council Directive (EU) 2020/262⁴ repeals and replaces Directive 2008/118/EC with effect from 13 February 2023, the corresponding provision in Directive (EU) 2020/262 should also be amended.
- (7) Directives 2008/118/EC and (EU) 2020/262 should therefore be amended accordingly,

⁴ Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (OJ L 58, 27.2.2020, p. 4).

HAS ADOPTED THIS DIRECTIVE:

Article 1

Amendment to Directive 2008/118/EC

Article 14 of Directive 2008/118/EC is amended as follows:

(1) The following paragraph 1a is inserted:

‘1a. The exemption provided for in paragraph 1 shall also apply to products supplied by tax-free shops situated in the French terminal of the Channel Tunnel in Coquelles to passengers holding transport documents which are valid for a journey to the United Kingdom through the Channel Fixed Link.’

(2) Paragraph 3 is replaced by the following:

‘3. Member States shall take the measures necessary to ensure that the exemptions provided for in paragraphs 1, 1a and 2 are applied in such a way as to prevent any possible evasion, avoidance or abuse.’

Article 2

Amendment to Directive (EU) 2020/262

Article 13 of Directive (EU) 2020/262 is amended as follows:

(1) The following paragraph 1a is inserted:

‘1a. The exemption provided for in paragraph 1 shall also apply to products supplied by tax-free shops situated in the French terminal of the Channel Tunnel in Coquelles to passengers holding transport documents which are valid for a journey to the United Kingdom through the Channel Fixed Link.’

(2) Paragraph 3 is replaced by the following:

‘3. Member States shall take the measures necessary to ensure that the exemptions provided for in paragraphs 1, 1a and 2 are applied in such a way as to prevent any possible evasion, avoidance or abuse.’

Article 3

Where a Member State decides to apply the exemption provided for in Article 14(1) of Directive 2008/118/EC in accordance with Article 1 of this Directive or the exemption provided for in Article 13(1) of Directive (EU) 2020/262 in accordance with Article 2 of this Directive, and adopts the laws, regulations and administrative provisions necessary to give effect to this Directive, it shall forthwith communicate to the Commission the text of those provisions.

When the Member State adopts those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The Member State shall determine how such reference is to be made.

Article 4

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 5

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President
